

CLIFORD L. CRONE
Claimant

GREAT BEND COOPERATIVE ASSOC.
Respondent

FARMLAND MUTUAL INS. CO.
Insurance Carrier

(1) Should the Administrative Law Judge have recused himself from any proceedings after claimant filed his petition and/or affidavit in support of his request for recusal?

- (2) Should Lee R. Dorey, M.D.'s opinion be considered as part of the record or should Dr. Dorey be disqualified from providing an opinion as a court ordered independent medical evaluator?
- (3) Is claimant entitled to workers compensation benefits for his low back as a direct and natural consequence of the left knee injury suffered on March 30, 1998?
- (4) What is the Board's jurisdiction to decide the above issues from the appeal of a preliminary hearing order?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board has held in the past and continues to rule that it does not have the jurisdiction to rule on whether an administrative law judge should recuse himself or herself from workers compensation matters. See Boyd v. Presbyterian Manors of Mid-America, Inc., and the Workers Compensation Fund, WCAB Docket No. 163,905 (September 1997); Hawk v. Rubbermaid-Winfield, Inc., and the Kansas Workers Compensation Fund, WCAB Docket No. 180,303 (March 1994). That decision rests squarely with the Workers Compensation Director, who as stated above has already ruled. The Board, therefore, will not take jurisdiction of the claimant's request that Judge Moore recuse himself from these proceedings.

The Board will next consider the claimant's objection to the consideration of Dr. Dorey's opinion. Claimant's cites numerous reasons why he believes Dr. Dorey's opinion should be excluded from the record. Those arguments were rejected by the Administrative Law Judge.

K.S.A. 1997 Supp. 44-555c grants the Appeals Board exclusive jurisdiction to review decisions of the Administrative Law Judge. This review is de novo on the record. The record contains substantial arguments concerning claimant's disagreement with Dr. Dorey and his qualifications to act as an independent medical evaluator in this case. However, the evidence fails to support that argument. Dr. Dorey is licensed in Kansas to practice medicine by the Kansas Board of Healing Arts. While the Board acknowledges Dr. Dorey encountered problems in the state of California and in the state of Washington, it also notes that, prior to his receiving his license in Kansas, his license to practice medicine was reinstated in the state of Washington. The evidence presented, while it may raise a question as to how much weight should be given Dr. Dorey's opinion, does not rise to the level of disqualifying him as an expert. His opinion testimony should not be excluded from

consideration by the Board. The Board, therefore, denies claimant's request to disqualify Dr. Lee Dorey as independent medical evaluator.

The Board will next consider claimant's contention that he is entitled to medical benefits for his low back as a direct and natural consequence of the left knee injury of March 30, 1998.

The Administrative Law Judge in the April 10, 2000, Order denied claimant's request for medical treatment for his back, finding that the evidence failed to establish a causal relationship between claimant's low back complaints and the knee injury of March 30, 1998. The Board disagrees. As stated in his medical report of May 1, 2000, Philip R. Mills, M.D., a physical medicine specialist, found a causal relationship between claimant's current complaints and the previous knee problem. He went on to specifically state in the report that "the back pain appears to be related to this injury and the gait change it engendered."

The Board also notes, in reviewing the medical records and reports of John R. Schurman, II, M.D., of Advanced Orthopaedic Associates in Wichita, that there is a connection between the increased atrophy in claimant's leg and the increased back pain experienced by claimant.

Finally, Dr. Dorey agreed that it is "possible" for claimant's knee problems to lead to an exacerbation or aggravation of a preexisting condition in claimant's spine. Dr. Dorey acknowledged there was no history of prior back problems before the March 30, 1998, knee injury or at least none that he was aware of. He testified that claimant's lower back condition is more likely the result of wear and tear with no specific cause but, as noted above, does acknowledge the possibility of an aggravation due to claimant's altered gait.

The Board finds, after reviewing the medical records of Dr. Schurman, Dr. Mills and Dr. Dorey, that claimant has proven for preliminary hearing purposes that his ongoing back problems are, at the very least, being aggravated by the altered gait created by the injury to his left knee on March 30, 1998. Therefore, the Board reverses the decision of the Administrative Law Judge denying claimant benefits for his low back.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bruce E. Moore dated April 10, 2000, should be, and is hereby, reversed, in part, in that claimant's back complaints are found to be causally related to the March 30, 1998, accident, but the Order is otherwise affirmed. Claimant's request that Administrative Law Judge Bruce E. Moore recuse himself is dismissed as the Board does not take jurisdiction of that issue.

IT IS SO ORDERED.

Dated this ____ day of March 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
 Jeffrey E. King, Salina, KS
 Bruce E. Moore, Administrative Law Judge
 Philip S. Harness, Director